

REMARKS

Amendments to the claims have been made to comply with the Examiner's concerns, to clarify aspects of the claims, and to refine claim language. The amendments are believed to be consistent with the disclosure originally filed. The amendments have also been particularly presented to avoid, where applicable, any admission or estoppel, generally, negatively affecting the scope of protection provided by the disclosure and claims of the present application, and particularly to avoid prosecution history estoppel, limitation of the scope of equivalences, or the like. Thus, it should be understood that claims 1-27 are cancelled without prejudice in this application. Claims 28-50 remain in this application.

The action expressed concern as to the specification because of certain informalities relating to numbers used to refer to references. It is believed that all of these reference numbers have been removed.

The action also expressed concerns relative to Applicant's claims for priority. As indicated in the Amendments to the Specification, the Applicant has amended the specification to list a claim for priority to U.S. Provisional Patent Application No. 60/224,050, filed August 9, 2000, and U.S. Provisional Patent Application No. 60/211,093, filed June 12, 2000. Other listings are now only incorporated by reference in a redundant explicit statement on page 53. It is redundant because each was incorporated previously in the list of references. In addition, the Applicant as part of this response further has provided a revised Application Data Sheet reflecting the revised claim for benefit of priority.

The action also expressed concern as to the claims claims under 35 U.S.C. § 112, First Paragraph, citing various enablement issues and concerns. Although not specifically called out as such, the Examiner's enablement issues and concerns principally appear to be directed toward sorting spermatozoa to particular levels of enrichment with particular focus on the potential breadth of the claims being applicable to humans. With regard to sorting spermatozoa to particular levels of enrichment and making the subject matter of the application applicable to humans, the Applicant has cancelled claims 1-27 without prejudice and has added new claims

28-50. Of these, only claim 46 includes the levels of success values and it is limited to only five particular species, namely bovids, equids, porcids, ovids, and goats. In addition the applicant is submitting an affidavit of John Schenk to explain that sorting to the specified levels in the specified species is and was known. As a result of this focus, the Applicant believes new claims 28-50 fully address and are fully responsive to the Examiner's enablement issues and concerns regarding the aforementioned points. It should be noted that the Applicant has voluntarily implemented these amendments solely to aid the Examiner and to expedite examination of the application; such should not be deemed as presenting any estoppel or the like and the Applicant expressly reserves the right to present the full scope of the prior claims at any time.

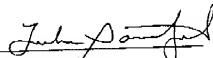
The action also expressed concern relative to claims under 35 U.S.C. § 112, Second Paragraph, questioning if the claims were definite. Since the initial claims have been cancelled, it is believed that this concern is now moot. As to new claim 45, it may be noted that the Applicant has presented this claim to recite "a typical number of unsexed spermatozoa" rather than "a typical number of spermatozoa" as suggested in the April 5<sup>th</sup> telephone interview with the examiner. With respect to the numbers of spermatozoa of a particular species of nonhuman female mammals recited in the claims, the Applicant notes that the typical number of unsexed spermatozoa to use for an artificial insemination sample is well known in the art for a given species of mammal.

The action also expressed concern under 35 U.S.C. § 102 and 103. Although the Applicant disagrees with the proposed conclusions and with many of the factual interpretations posed, again, since the initial claims have been cancelled, it is believed that these concerns are now moot and so such aspects are not addressed at this time.

The Applicant, having addressed each of the issues and concerns raised in the Office Action, respectfully requests reconsideration and withdrawal of the rejections and objections to the application. Allowance of claims 28-50 is requested at the examiner's earliest convenience.

Dated this 5<sup>th</sup> day of April, 2004.

Respectfully submitted,  
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